

1
2
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 * * *

6 EDWARD LONDON,

Case No. 3:20-cv-00284-MMD-CLB

7 Plaintiff,

ORDER

8 v.

9 CHARLES DANIELS, *et al.*,

10 Defendants.

11 *Pro se* Plaintiff Edward London brings this action against Defendants Skyler
12 Sheeks and Luis Sencion-Gonzalez under 42 U.S.C. § 1983. (ECF No. 8.) Before the
13 Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge
14 Carla L. Baldwin (ECF No. 43), recommending that the Court deny Defendants’ motion
15 for summary judgment (ECF No. 32 (“Motion”)). Objections to the R&R were due
16 November 28, 2022. To date, neither party has objected to the R&R. For this reason, and
17 as explained below, the Court adopts the R&R in full and denies Defendants’ Motion.

18 Because there were no objections, the Court need not conduct de novo review,
19 and is satisfied that Judge Baldwin did not clearly err. *See United States v. Reyna-Tapia*,
20 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings
21 and recommendations is required if, but *only* if, one or both parties file objections to the
22 findings and recommendations.”) (emphasis in original). First, Judge Baldwin correctly
23 found that Defendants’ official capacity argument fails because the claims were screened
24 as personal capacity claims. (ECF No. 43 at 7.) *See Mitchell v. Washington*, 818 F.3d
25 436, 442 (9th Cir. 2016). Second, the record does not show London’s failure to exhaust
26 because Defendants did not respond to his grievance and administrative remedies were
27 unavailable to him after London was told not to resubmit his grievance. (*Id.* at 10-11.) *See*
28 *Fordley v. Lizarraga*, 18 F.4th 344, 352 (9th Cir. 2021); *Ross v. Blake*, 578 U.S. 632, 643-

1 44 (2016). Next, Judge Baldwin correctly concluded that there is a genuine issue of
2 material fact regarding whether Defendants used excessive force against London. (*Id.* at
3 13-14.) See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Finally, Judge Baldwin
4 correctly determined that Defendants are not protected by qualified immunity because a
5 reasonable factfinder could conclude that Defendants violated London's clearly
6 established constitutional rights. (*Id.* at 16.) See *C.B. v. City of Sonora*, 769 F.3d 1005,
7 1022 (9th Cir. 2014). Accordingly, the Court adopts Judge Baldwin's R&R in full and
8 denies Defendants' Motion.

9 It is therefore ordered that Judge Baldwin's Report and Recommendation (ECF
10 No. 43) is accepted and adopted in full.

11 It is further ordered that Defendants' motion for summary judgment (ECF No. 32)
12 is denied.

13 It is further ordered that this case is referred to Judge Baldwin to conduct a
14 settlement conference. The deadline for the parties to file the proposed joint pretrial order
15 is 30 days from the date of the settlement conference, assuming settlement is not
16 effectuated.

17 DATED THIS 30th Day of November 2022.

18 

19 _____
20 MIRANDA M. DU
21 CHIEF UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28